November 30, 2021

Paul Adams
Internal Revenue Service, Room 6526
1111 Constitution Avenue NW
Washington, DC 20224

Re: Request for Comments on U.S. Tax-Exempt Income Tax Return, Form 990 Series.
OMB Number: 1545-0047.

Dear Mr. Adams:

Thank you for this opportunity to submit comments in response to the Internal Revenue Service's Notice and Request for Comments on Tax-Exempt Organization Forms published in the Federal Register on October 1, 2021. In particular, thank you for inviting comments on ways to enhance the quality, utility and clarity of the information to be collected in the Form 990 series, and ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, or other forms of information technology.

The groups and individuals submitting these comments are leading members of the tax-exempt community in the United States. These researchers, nonprofit organizations, data scientists, and Form 990 platforms play a key role in taxpayer compliance by gathering data on trends in tax exempt activities, finances and governance, and communicating with the public through the provision and analysis of "open" 990 data.

Signatories to the comments include such groups as the Aspen Institute's Program on Philanthropy and Social Innovation, Candid, Charity Navigator, Independent Sector, National Committee for Responsive Philanthropy, as well as some of the most prominent individual researchers and analysts of tax-exempt activity in the United States today.

Should you have any questions, please contact me at the Aspen Institute's Program on Philanthropy and Social Innovation at cinthia.schuman@aspeninstitute.org.

Sincerely,

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Public Comment on the U.S. Tax-Exempt Income Tax Return: Form 990 Series

Summary

The Taxpayer First Act represents a major step forward with respect to transparency, efficiency, and understanding of the tax-exempt sector. Through mandatory electronic filing of tax-exempt returns and the release of this information by the IRS in a machine-readable format, nonprofit information will be more accessible than ever before, creating a wealth of knowledge for nonprofit organizations themselves, regulators, donors and the general public. Such information has the potential, in turn, to greatly improve compliance and government oversight, by providing the public with tools to detect and locate potential concerns. Thus, the recommendations below support efforts by the Internal Revenue Service (IRS) to advance compliance, in this case by strengthening the public's ability to be informed about tax-exempt organizations and activities—among the primary reasons that Congress mandated transparency with respect to the Form 990 series.

The nonprofit sector employs ten percent of the nation's workforce. It is the third largest private sector workforce, ahead of manufacturing, and comprises at least five percent of the Gross Domestic Product (GDP). Information on this important sector of our economy and society is critical to sound policymaking and practice, as well as informed decision making by citizens throughout the country. One of the greatest sources of information on the nonprofit sector is the Form 990 series, the information returns which nonprofit organizations are required to file annually with the Internal Revenue Service (IRS) and with many states. The Form 990 series is regularly used by nonprofit leaders, donors, charity officials, policymakers and the general public for information and accountability purposes.

In 2016, the IRS took the historic step of releasing open, machine-readable *e-filed* Form 990 data on Amazon Web Services (AWS). Even this limited source of open 990 data has proven to be invaluable as the public is now mining previously inaccessible data to shed light on many aspects of tax-exempt operations. However, as the IRS works to implement the Taxpayer First Act and expand electronic filing, it is recommended that it address several communications, technical and substantive gaps so that the full potential of these data can be realized.

Thus, as part of the implementation of the Taxpayer First Act, we recommend that the IRS take the following steps to increase the availability, quality, utility and clarity of Form 990 information which will, in turn, strengthen taxpayer compliance:

1. **Improve Communication with the Public and Address the Quality, Utility and Accessibility of 990 Data:**
    a. Create a Regular Form 990 Release Schedule and Web Page
    b. Ensure that Data are Complete
    c. Appoint a Form 990 Technical Liaison within the IRS
    d. Take Steps to Make Data More Accessible and Usable (Post Form 990 "Schema," and Create/Improve Data Indices)

2. **Improve the Reporting of Government Revenue Through Modifications to Part VIII of the Form 990:**
    a. Create a Dedicated Line for Government Reimbursements (e.g., Medicare/Medicaid

and Contracts) in Part VIII, line 2(a)

b. Clarify the Distinction between Grants and Contracts That Benefit the Public Versus Those Payments That Serve the Needs of a Governmental Unit

3. **Continue the Valuable Work of the Statistics of Income (SOI) Division with Respect to Tax-Exempt Organization Data Files:**

   a. Regularly Publish Revenue Transaction Files (RTF) and Close the Gap of Missing RTF Extracts of Form 990-PF Returns Processed in 2017, 2018 and 2019.

1. Recommendation: Take Steps to Improve Communication with the Public and Address Gaps in Quality, Utility and Accessibility of Data

- **Create a Regular 990/AWS Release Schedule and Web Page** While the release of e-filed 990 forms to AWS has provided access to a wealth of data, effective use of the data is hampered by a lack of communication and a regular release schedule. This has created delays, and left many tax-exempt stakeholders in the dark when it comes to the regularity and timing of the release of electronically-filed 990s to AWS. The creation of a 990 data release schedule would allow the public to plan ahead. In addition to a release schedule, the IRS should consider using the format of the Exempt Organizations Business Master File page on the IRS website to create a page pertaining to the e-filed 990s. This page would recap the particulars of releases, such as record counts and posting dates, provide contact information for questions, and serve other communications functions.
- **Ensure that Data are Complete**. There is a need to ensure that when released, data are complete. Experts have noted missing returns and inconsistencies. For example, the June 2021 release of 990-PF RTF extracts of returns processed during calendar year 2020 contained almost 60,000 e-filed 990-PF returns that were not found on AWS.

- **Appoint a 990 Liaison within the IRS.** The public would benefit from an IRS point person, or mechanism, for handling questions regarding the e-filed Form 990 data on AWS. Currently, there is no procedure, or contact, for addressing questions as they arise. This is not only inefficient and frustrating for tax-exempt stakeholders, but it deprives the Service of a feedback loop that could be used to make upgrades and corrections that are particularly important during the early stages of this new undertaking.

- **Take Steps to Make Data More Accessible and Usable (Post Form 990 "Schema," and Create/Improve Data Indices)**

  - **Post Form 990 "Schema."** The Extensible Markup Language (XML) files on AWS have proved to be a challenge for even high-level data scientists, who have encountered such problems as multiple versions of the forms and the lack of documentation or "metadata." One major concern is the inaccessibility of the IRS Form 990 XML schema, which are *necessary* for the understanding and interpretation of the underlying 990 data. While the schemata were previously available to the public, they have now been moved to an IRS Secure Object Repository (SOR) that requires individuals to engage in a complex registration process prior to accessing them. This process—essentially registering as an authorized e-file provider for the IRS —requires applicants to make available their Social Security Number and Adjusted Gross Income, as well as pass a detailed "suitability check." The whole process appears to take months to complete. Given that the Form 990 is a public document, there is concern that a registration process that involves sensitive information will have a chilling effect on the use of 990 data by the public. Communication between the IRS and the nonprofit data community on such issues as improving public access to Form 990 schema is imperative.

If the IRS plans to release the schema on an individual, case-by-case basis, then it makes sense to inform the public of this fact and provide a contact name for making those requests. This information could be posted on the web page described above.

- **Improve the consistency of the 990 indices currently accessible via AWS.** The sector has appreciated the commitment of the IRS to releasing electronically-filed Form 990 data to AWS. There are, however, serious concerns with the indices, which are necessary for discerning the underlying data. For example, the indices, which are published in .json and .csv, are not consistent. We have learned that, in some cases, .json files are missing a significant amount of records that appear in the .csv files. Additionally, if an organization makes two filings in the same year, the .json file only includes the first one. The lack of accurate and consistent information threatens the reliability of the data. We request that the IRS look into these inconsistencies and create a method for addressing these problems.

- **Provide an index to the URLs of 990 PDFs currently accessible via Tax Exempt Organization Search (TEOS).** We are grateful that the IRS provides public access to scanned and e-print (printable) 990s free of charge through its website. Currently, these .pdf files can be downloaded individually (through TEOS) or in bulk (through a separate page on the IRS website: [https://www.irs.gov/charities-non-profits/form-990- series-downloads](https://www.irs.gov/charities-non-profits/form-990-series-downloads)). There is no way, however, to link directly to the individual .pdf files hosted by the IRS. The existence of an index file that links EIN and tax period to a URL, as exists for machine-readable (XML) filings, has facilitated great innovation within the research community. A similar index for the .pdf files that includes filing type (e-file vs. scanned paper) would likewise broaden access to these essential public records. It would also eliminate the current wasteful practice of having to download the entire population of PDF images to search and access specific return images.

Addressing the gaps outlined above will increase the availability, quality, and utility of the Form 990 series. More importantly, it will build stronger avenues for dialogue between the IRS and the tax-exempt sector which, in turn, will strengthen compliance efforts.

2. Recommendation: Improve the Reporting of Government Revenue Through Modifications to Part VIII of the Form 990

Government has emerged as one of the largest funders of nonprofit activity in the United States. It is therefore vitally important to have a full picture of the overall scope of government funding of the nonprofit sector, how this support has varied over the years, and what types of nonprofits and areas of the country are experiencing changes in government funding of nonprofits.

In the current environment, information on government funding of the nonprofit sector is particularly relevant, both from a compliance and policymaking standpoint. In addition, we'd like to point out that there is a growing chorus of prominent voices expressing a need for this information: Independent Sector's comments on the Form 990 earlier this year addressed this need. Comments submitted by the National Council of Nonprofits also refer to this need. We would also add that the American Institute of Certified Public Accountants (AICPA) spoke to this issue in 2011.

Unfortunately, due to modifications of the form, the Form 990 Part VIII Statement of Revenue continues to lack sufficient clarity with respect to the reporting of government revenue, confusing users of the form, and likely resulting in inaccurate reporting. In particular, two of the largest sources of government support to the nonprofit sector—voucher-type reimbursements such as Medicare and Medicaid, and government contracts—are buried in the "program service revenue" line along with private payments for services. For example, since 2008, when the Form 990 was modified, the Service has not asked nonprofits to separately report their revenue from Medicare, Medicaid and other reimbursement payments. These payments, which reach a broad array of nonprofits beyond hospitals, are now generally aggregated with other "program service revenue," obscuring the largest form of government support to the nonprofit sector. We understand that Medicare and Medicaid are captured for hospitals on Schedule H, Part III. However, this schedule is only for hospitals, and Medicare and particularly Medicaid are available to many other health and human service providers. As Congress considers prospective changes in government programs, such as Medicare and Medicaid, transparent and proper reporting of how these funds are being distributed and utilized across the nonprofit sector becomes more important.

Similarly, despite the fact that government contracts are a major and common source of nonprofit revenue, they are not separated on the Form 990, leading to additional confusion, particularly because contracts may fall either under Part VIII, line 1(e) (government grants), if they benefit the public as whole, or within Part VIII, section 2 (program service revenue), if the contract primarily benefits a government agency. Nowhere on the form is the totality of government support reported. Nor can this totality be computed from elements of it that are reported, since some of the most sizable elements are buried. To avoid these problems, government revenue should be more clearly labeled and distinguished in the Form 990, as noted in the following proposed changes to the form.

2a. Medicare/Medicaid/Contracts: Part VIII, Line 2 – Form 990. As noted above, Medicare and Medicaid payments, and other government reimbursements represent the largest source of government revenue to the nonprofit sector, but the extent of these payments is now obscured due to changes to the Form 990 in 2008.

Recommendation 2a: Clearly Label Government Revenue & Modify Instructions
Insert "Government Reimbursements (e.g. Medicare/Medicaid/ and Contracts)" on existing line 2(a) of Part VIII of the current Form 990. **Note: This change could be made without adding any further lines to the form since five (5) blank lines are already included on the existing form for organizations to list their "program service revenue."**
The first sentence of the Form 990 Instructions, Part VIII, line 2, could be replaced with the following sentences: If applicable, on line 2a enter any revenue received from government reimbursement programs such as Medicare or Medicaid, fees and contracts from government agencies that primarily benefit the agencies, and any other similar government payments. On lines 2b through 2e, enter the organization's four other largest sources of program service revenue.

2b. Recommendation: Clarify the Distinction between Grants and Contracts That Benefit the Public Versus Those Payments That Serve the Needs of A Governmental Unit

Many in the nonprofit sector have difficulty distinguishing between grants and contracts that benefit the public versus those payments that serve the needs of a governmental unit. The 2015 Advisory Committee on Tax Exempt and Government Entities (ACT) report highlighted this problem, finding that it can result in "inconsistent reporting among seemingly comparable organizations" as well as errors in the computation of some organizations' public support test on Schedule A. Given the significance of government revenue to the nonprofit sector, it is important that the IRS take steps to address this.

Recommendation 2b: Clarify the Distinction Between Grants and Contracts that Benefit the Public Versus Those Payments that Serve the Needs of a Governmental Unit.

Clear up confusion regarding what constitutes government grants/contracts that are treated as contributions in line 1(e) by providing additional useful examples—beyond those listed in the current instructions to lines 1 and 2 - drawn from nonprofit experiences.

Our organizations are happy to confer with nonprofits (such as Independent Sector, the National Council on Nonprofits, and state level nonprofit associations, as well as associations of accountants) to determine typical use cases that would be most helpful to add to the instructions.

In the meantime, *possible examples* might include:

• **Example 1:** A state department of social services enters into a contract with a child welfare agency to provide a variety of services to children in need within the state. Since the contract benefits the general public, not the government agency, it is considered a contribution and is reported on line 1e.

• **Example 2:** A government housing agency enters into a contract with a nonprofit community development organization to construct moderate-income housing. The housing is for local residents, not government employees, so the funding should be noted as a contribution in line 1e.

• **Example 3:** A city council contracts with a nonprofit organization for services related to proper wastewater management at a city office building. Since the direct benefit of the funding is for the local government, not the general public, it does not count as a contribution.

• **Example 4:** In a city, there are thousands of government-held, vacant lots. The government provides a grant to a nonprofit to transform several of the vacant lots into community gardens. The grant should be considered a contribution on line 1e because the beneficiaries are community members who will use the garden.

3. Recommendation: Continue the Valuable Work of Statistics of Income (SOI) Division with Respect to Tax-Exempt Organization Data Files, Including Publishing Revenue Transaction Files for 990-PFs 2017 - 2019

As the IRS states on its website, the Revenue Act of 1916 mandated the annual publication of statistics related to "the operations of the internal revenue laws" as they affect:

- Individuals
- All forms of businesses
- Estates
- Nonprofit organizations
- Trusts
- Investments abroad and foreign investments in the United States

The Statistics of Income (SOI) division of the IRS fulfills this function by collecting and processing data and sharing this information with other governmental bodies and the general public.

The work of SOI is extremely valuable with respect to nonprofit data and research. For decades, SOI has collected microdata from a sample of Forms 990, 990-PF, and 990-EZ filed. The returns in the sample are subject to extensive cleaning, testing, research, and reallocation. The microdata files, which include several thousand data fields from Forms 990 and 990-PF, comprise the population of the largest nonprofit charities and the largest private foundations. These files are made available to the public, at no cost, on www.IRS.gov. In addition to downloading microdata files, users can access the SOI Bulletin, annual and time-series tables based on the Form 990-series and other research publications.

The SOI tax-exempt data files remain an indispensable source of high-quality nonprofit data. While the release of e-filed Form 990 data under the Taxpayer First Act is of tremendous benefit to the public, there is still a need for the high-quality information that SOI researchers gather, analyze, and publish. We, therefore, express our support for the work of SOI, and hope that the IRS will continue its support of the production and release of SOI's tax-exempt organization files.

Notwithstanding our strong support for the work of SOI, we wish to raise concerns regarding the annual Revenue Transaction File (RTF) extracts of Forms 990, 990-EZ and 990-PF returns. This information has not only been critical for the basis of New Consumer Classification System "Core Files," but it has also served as the only available open source of data for 501(c) organizations that file by mail, the so-called "paper filers."

The annual Return Transaction Files (RTF) represent every 990/990EZ/990-PF return processed by the IRS during the year, while SOI weighted samples normally lag RTF data by a full year and are based on a small number of organizations selected by size alone. SOI is mainly useful for national estimates, but does not sufficiently account for different types of organizations, or for regional, state, or local variations. Annual RTF extracts have become increasingly important to research and policy communities. Consequently, we believe that the reinstatement and consistent release of 990-PF RTF files is imperative to understanding a critical source of nonprofit funding representing nearly $1 trillion in assets.

The sector applauds the SOI division for its recent publication of Form 990-PF returns processed during 2020, and its stated commitment to also publish Form 990-PF returns processed during the prior three calendar years. Prior to this release, there had been no comprehensive public source of private foundation data since approximately fiscal year 2015. We cannot overstate the importance of these data to public understanding and oversight. We strongly support and urge all efforts to close the gap of missing RTF extracts of Form 990-PF returns processed in 2017, 2018 and 2019.

Conclusion

We urge the Internal Revenue Service to continue to work with the nonprofit sector to address the important concerns noted in this letter. Thank you for your consideration. Should you have any questions, please contact Cinthia Schuman Ottinger at cinthia.schuman@aspeninstitute.org.

Sincerely,

Aspen Institute's Program on Philanthropy and Social Innovation

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Independent Sector

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